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राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश शासन द्वारा प्रकाशित

शिमला, शुक्रवार, 20 जून, 1958/30 ज्येष्ठ, 1880

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi-2, 5th June, 1958/15th Jyaistha, 1880 (Saka)

No. 82/479/57/7885.—WHEREAS the election of Shri Yashwant Singh Parmar as a member of the House of the People from the Mahasu Constituency of that House was called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Hira Singh Pal, S/o Shri Parshotam Dass Pal, village Domehar, Tehsil Arki, District Mahasu (Himachal Pradesh);

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, MAHASU, AT NAHAN, HIMACHAL PRADESH

Present:—Sri S. D. Khare, Member.

ELECTION PETITION No. 479 OF 1957

Petitioner:—Sri Hira Singh Pal, son of Sri Parshotam Dass Pal, Rajput, village

• Demehār, Tehsil Arki, District Mahasu, Himachal Pradesh.

Versus

Respondents:—(1) Sri Yashwant Singh Parmar, son of Sri Shiva Nand Bhandari, Rajput, Nahan, Tehsil Nahan, District Sirmoor, Himachal Pradesh;

(2) Sri Nek Ram, son of Sri Barkat Dass, Thataria, Narkanda, Tehsil Theog, District Mahasu, Himachal Pradesh.

Election Petition against the election of respondent No. 1 to the Mahasu Parliamentary Constituency from General Seat, declared on 20-6-1957.

PLEADERS

For the petitioner:—(1) Sri Muni Lal Kalia, Advocate.
(2) Sri Ishwar Dass, Advocate.

For respondent No.—1: (1) Sri R. C. Gupta, Advocate.
(2) Sri K. C. Pandit, Advocate.
(3) Sri Mahant, Advocate.

For respondent No. 2:—Sri Tapindra Singh, Advocate.

JUDGMENT

This is an election petition filed under section 81 of the Representation of the People Act, 1951, by Sri Hira Singh Pal, an unsuccessful candidate to the membership of the Lok Sabha from the double-member Mahasu Constituency of Himachal Pradesh. The two respondents are Sarv Sri Yashwant Singh Parmar and Nek Ram, who were declared successful in the election. It is prayed that the election of Sri Yashwant Singh Parmar, respondent No. 1, to the Mahasu Parliamentary Constituency from the general seat be declared void and set aside.

The undisputed facts leading to this petition are that the election to the Lok Sabha from the double-member Mahasu Parliamentary Constituency, Himachal Pradesh, took place from 25th of May to the 6th of June, 1957. The nomination papers were filed by 10 candidates including the parties to the petition but the ultimate contest was between 8 candidates only because two others withdrew their nominations. The counting of votes took place between 15th to 20th of June, 1957 and Sarv Sri Yashwant Singh Parmar and Nek Ram were declared successful from the general and reserved seats respectively. Sri Yashwant Singh Parmar, respondent No. 1, secured 4,962 votes more than his nearest rival Sri Hira Singh Pal, the petitioner.

It is alleged by the petitioner that the election of respondent No. 1, the returned candidate for the general seat, must be declared void and set aside because he was guilty of several corrupt practices. It is said that the respondent No. 1 was guilty of the corrupt practice of *undue influence* because he utilised the photo of and an appeal by Pt. Jawahar Lal Nehru on one of his hand-bills bearing the heading "Vote for Dr. Y. S. Parmar". It is further said that the respondent No. 1 brought to Nahan Sri M. M. Shah, Union Minister for Industries, to influence the workers of the Nahan Foundry Ltd., the Maharaja of Patiala and Sri Pratap Singh Kairon, Chief Minister of Punjab, to influence the Sikh voters; and Sri Abid Ali, a Minister in the Central Government, to influence the Muslim voters of Misarwala (Paonta tehsil). It is said that the police was made to present a guard of honour to the Maharaja of Patiala on his arrival at Paonta. It is further alleged that the respondent No. 1 conspired with

Sri Gaur, a Conservator of Forests, and got the forest near villages Ajauli, Baliwala and Kishankote opened for some days only for grazing their cattle from a few days before the date of poll.

Another corrupt practice alleged to have been committed by respondent No. 1 is that of *bribery*. It is alleged that one Sri Satya Pal of Nahan was bribed at Rajna polling station on the night of 2nd June, 1957; that work was taken from Mohd. Rahman and his father Mohd. Ramzan on a promise that Mohd. Rahman would be employed in the service of Nahan Municipality as its Secretary; and that respondent No. 1 got printed notes of various denominations from Rs. 5 to rupees one lac, bearing photos of various personalities, and got them distributed amongst the illiterate voters at Surajpur and Kanuwala in Paonta and Nahan tehsils in order to create an impression that the voters were being asked to vote for Sri Y. S. Parmar in lieu of those notes.

The third ground of attack of the petitioner is that the respondent No. 1 obtained, procured or abetted or attempted to obtain, procure by himself, by his agents and by his supporters the *assistance of the Government servants* for the furtherance of the prospects of his election. It is alleged that one Amar Singh of Sheopur, Tehsil Paonta, District Sirmur, was a member of the Armed Forces of Indian Union but the worked and canvassed for respondent No. 1 in village Sheopur, Kanuwala and Haripur and also was appointed as a polling agent by respondent No. 1 for polling station Sheopur No. 13 on 25-5-1957. It is further alleged that the services of Sarv Sri Sumer Chand and Surat Ram Lumberdars were utilised for canvassing and influencing the electorate in favour of respondent No. 1 and that they were also appointed as the polling agents of respondent No. 1 at polling station No. 4 (Puruwala Kanshipur) and polling station No. 106 (Tandyula), respectively.

The fourth ground taken is that the result of the election has been materially affected by the *non-observance of the various provisions of the Representation of the People Act, 1951*, and the rules framed and orders passed thereunder. It is alleged that polling stations Nos. 433, 416, 83, 247 and 46 were published to be located at Jonli, Katari, Siasu, Bambira and Ganog, respectively, but the polling actually took place at Sungri instead of Jonli, Ghasni instead of Katari and Sarog instead of Siasu. It is further alleged that the polling stations at Bambira and Ganog were located in temporary structures but after some time the venue was changed due to the rains and the polling took place inside private houses to which most of the voters were unable to go.

The fifth ground taken up by the petitioner is that there had been *impersonation* at the instance of respondent No. 1 and his agents and one Soran S/o Rulia of village Deoni, Tehsil Nahan, impersonated for his father on 28-5-1957, at polling station No. 29 (Deoni) and that one Mela Ram impersonated for one Kanshi Ram of village Thanga, Tehsil Renuka, on 3-6-1957, at polling station No. 102 (Naura).

The next ground taken up by the petitioner is that respondent No. 1 had *induced the election staff to help him* as will appear from the facts that contrary to the usual practice the ballot boxes for Parliamentary Constituency were placed in the first booth and ballot boxes for Territorial Constituencies were placed in the second booth; that no notification was issued although innumerable ballot papers for Mahasu Parliamentary Constituency were reported to be lost; that at the time of counting a ballot box of polling station No. 554 (Murang) contained an outside symbol of respondent No. 1

while the inside symbol was that of Sri Satya Deo Bushahri; and that the ballot boxes were tampered with as was apparent from the fact that a match box and a stone had been recovered from inside them at the time of the counting.

The last ground of attack by the petitioner is that the return of *election expenses* filed by respondent No. 1 does not satisfy the requirements of the Representation of the People Act, 1951, and the rules framed thereunder and that the said respondent had spent more than the prescribed limit. It is contended that the expenditure incurred on the visits of Maharaja of Patiala, Union Ministers and State Ministers has not been shown and that a huge amount must have been incurred by respondent No. 1 on his polling agents and camps outside the polling stations.

The case of the petitioner is that the result of the election has been materially affected by the above mentioned corrupt practices and illegalities and that all of them were committed either by the respondent No. 1 or by his agents or supporters and with his consent.

Both the respondents contest, respondent No. 1 did not, however, dispute that the hand-bills bearing the photograph of and an appeal by Pt. Jawahar Lal Nehru were distributed by the Congress Party in connection with the respondent's election. It was also not disputed that Sarv Sri M. M. Shah, Sardar Pratap Singh Kairon, the Maharaja of Patiala and Abid Ali visited the constituency between 21st and 24th of May, 1957. It was contended that they had not come at the instance of respondent No. 1 but had been asked by the Congress organisation to make those tours. Respondent No. 1 further pleaded that he had not taken the assistance of any Government servant in connection with his election. As regards Amar Singh, he pleaded that he was not a polling agent of the respondent either in law or in fact. He further alleged that after the receipt of a copy of the petition from the Election Commission the respondent made enquiries and was informed that one Amar Singh of Sheopur had presented a polling agent from to the Presiding Officer concerned but soon after that some body, who happened to know Sri Amar Singh as a member of the Armed Forces, pointed out that he was not eligible to act as a polling agent. It is further alleged that as soon as that objection was raised Amar Singh withdrew from the polling station before the commencement of actual voting and without doing any work as polling agent. Respondent No. 1 denied that there had been any non-observance of the provisions of the Representation of the People Act, 1951, or the rules framed thereunder and pleaded that the election return filed by him was correct; that there had been no impersonation and that the election staff had not helped him.

All the material allegations made in the petition were denied. It was further pleaded by the respondent No. 1 that he had given specific directions to his workers, agents and supporters that they must not be a party to any corrupt or illegal practice and that the corrupt practice of illegality committed, if any, was without his sanction and contrary to his directions.

The respondent No. 2 also denied all the allegations made in the petition and pleaded that inasmuch as no relief has been claimed against him the petition ought to be dismissed with costs so far as that respondent is concerned.

The following issues were framed:—

ISSUES

Issue No. 1.—(a) Whether posters bearing the photo of Sri Jawahar Lal Nehru

under the heading "Vote for Dr. Y. S. Parmar" were circulated throughout the constituency?

(b) Whether Sri M. M. Shah, Union Minister for Industries, as such exhorted the workers and the employees of the Nahan Foundry Ltd., to vote and work for respondent No. 1?

(c).—(i) Whether the respondent No. 1 arranged a presentation of guard of honour by the Himachal Pradesh police on 23rd May, 1957, to Maharaja of Patiala at Paonta and whether it was given out on that occasion that he represented the Government?

(ii) If so, whether it was done to influence the police and other Government servants?

(iii) Whether on that occasion the Maharaja of Patiala exhorted the Sikhs in the name of religion to vote for respondent No. 1?

• (d).—(i) Whether Sri Pratap Singh Kairon, Chief Minister of Punjab, told the audience during his visit to Solan that the area would remain un-developed in case the people did not vote for the Congress candidate?

(ii) Whether Sri Pratap Singh Kairon exhorted the Sikh voters in the name of religion to vote for Congress?

(e).—(i) Whether Sri Abid Ali, a Minister in the Central Government, was invited by respondent No. 1 and the Congress Party to canvass specially amongst the Muslim voters?

(ii) Whether Sri Abid Ali told the Muslim voters at Misarwala in the mosque on or about the 24th of May, 1957, that unless they voted for respondent No. 1 they would meet the same fate which they had met in the communal disturbances of 1947?

(f).—(i) Whether Sri Gaur, Conservator of Forests, declared the forest near village Ajoli, Baliwala and Kishankote open for grazing the cattle?

(ii) If so, was that done at the instance of respondent No. 1 in order to influence the voters of that area to vote for him?

Issue No. 2.—Whether one or more of the instances mentioned under Issues 1 (a) to 1 (f) (ii) amount to the corrupt practice of "undue influence" as defined in sub-section 2 of section 123 of the Representation of the People Act.

Issue No. 3.—In case the instances mentioned in Issues (c) (iii), (d) (ii) and (e) (ii) of Issue No. 1 are proved, what is their further effect, if any?

Issue No. 4.—Whether notes of various denominations were printed and distributed by respondent No. 1; or with his active connivance, and people were told that in lieu of those notes they should cast their votes in favour of respondent No. 1?

Issue No. 5.—Whether a promise was made to Mohd. Rahman by respondent No. 1, or with his consent or connivance, that he would be employed in the service of Nahan Municipality as its Secretary so that he may work for respondent No. 1?

Issue No. 6.—Whether Babu Ram and Jagannath of Dadahu gave a bribe to Satyapal of Nahan on 2nd June, 1957, with the consent of respondent No. 1, as alleged?

Issue No. 7.—(i) Whether any of the instances mentioned under Issues (4) to (6) amounts to "bribery" as defined in sub-section (1) of section 123 of the Representation of the People Act?

(ii) Whether the result of election, so far as respondent No. 1 is concerned, has been materially affected on that account?

Issue No. 8.—(i) Whether Amar Singh of Sheopur worked and canvassed for respondent No. 1 in village Sheopur, Kanuwala and Haripur as alleged?

(ii) Whether Amar Singh was appointed as polling agent by respondent No. 1 for polling station Sheopur No. 13 on 25-5-1957?

Issue No. 9.—Whether Sri Gaur, a Conservator of Forests, at the instance of respondent No. 1 declared the forest near village Ajoli, Baliwala and Kishankote open for grazing the cattle and thus worked for respondent No. 1?

Issue No. 10.—(i) Whether Sumr Chand and Surat Ram were Lumberdars as alleged?

(ii) If so, whether the aforesaid persons were appointed polling agents of respondent No. 1 at polling stations Nos. 4 and 6?

(iii) Whether Lumberdars are Government servants within the meaning of sub-section (7) of section 123 of the Representation of the People Act?

Issue No. 11.—In case one or more of Issues Nos. (8) to (10) is or are decided in the affirmative, whether the respondent No. 1 obtained, procured or abetted or attempted to obtain, procure by himself, by his agents and by his supporters the assistance of the Government servants as specified under the said issues for the furtherance of the prospects of his election?

Issue No. 12.—(i) Whether there was un-authorised change of the places of polling stations as alleged in clauses (i) to (v) of para 4 (d) of the petition?

(ii) Whether the result of the election so far as it concerns respondent No. 1 was materially affected on that account?

Issue No. 13.—(i) Whether Soran and Mela Ram impersonated and cast votes for others, as alleged?

(ii) Was that done at the instance of respondent No. 1 and did it materially affect the result of the election so far as respondent No. 1 is concerned?

Issue No. 14.—Whether there was non-observance of rules on the part of election staff as alleged in clauses (i) to (iii) of sub-para (f) of para 4 of the petition. If so, was that done at the instigation of respondent No. 1 and did it materially affect the result of the election so far as respondent No. 1 was concerned?

Issue No. 15.—(i) Whether the ballot boxes were tampered with as alleged?

(ii) If so, its effect?

Issue No. 16.—(i) Whether respondent No. 1 has spent more than the prescribed limit as alleged in clauses (i) and (iv) to sub-para (h) of para 4 of the petition in contravention of section 77 of the Representation of the People Act?

(ii) If so, its effect?

Issue No. 17.—(i) Whether respondent No. 1 gave specific direction to his workers, supporters and agents and that they must not be a party to any corrupt or illegal practice?

(ii) If so, whether corrupt practice or illegality committed, if any, was without his sanction and contrary to his directions?

Issue No. 18.—To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 1.—(a) The petitioner has filed two hand-bills (paper No. 24-Kha and 25-Kha) under this issue. Paper No. 24-Kha (Ex. 1) is in English purporting to have been issued by Himachal Pradesh Congress Committee, Simla. The hand-bill bears on the left hand side top the photo of Sri Jawahar Lal Nehru and a heading "Vote for Dr. Y. S. Parmar". It also contains the following message from Sri Jawahar Lal Nehru:—

"I send my good wishes to Dr. Y. S. Parmar, who is standing as a Congress candidate from Mahasu Constituency for election to the Lok Sabha. I hope that the people of Mahasu will vote for him and ensure his success in the election."

Paper No. 25-Kha (Ex. 2) is more or less a translation of the hand-bill (Ex. 1) in Hindi. It also contains the same message from Sri Jawahar Lal Nehru and there is also his photo on the left hand side top of the hand-bill.

Darshan Singh (P.W. 10), Onkar Singh (P.W. 14), Arjun Singh (P.W. 17) and Sri Hira Singh Pal (petitioner) (P.W. 30) stated that such hand-bill or posters were distributed in large numbers during the election period. Onkar Singh (P.W. 14) and Arjun Singh (P.W. 17) further stated that the effect of these hand-bills on the public was that they thought that they were voting for Sri Jawahar Lal Nehru.

Jugal Kishore (R.W. 8) and Sri Parmar (P.W. 10), respondent No. 1, admitted that such hand-bills were distributed freely at the time of the election.

I, therefore, find that the posters bearing the photo of Sri Jawahar Lal Nehru under the heading "Vote for Dr. Y. S. Parmar" were circulated throughout the constituency. This part of the issue is decided in the affirmative.

Issue No. 1.—(b) It relates to the visit of Sri M. M. Shah, Union Minister for Industries, to Nahan on the 20th May, 1957. The visit of Sri M. M. Shah to Nahan on 20th May for election campaign is not disputed by respondent No. 1. The only point for consideration is whether Sri M. M. Shah's visit was designed to influence the workers and the employees of the Nahan Foundry (Private) Ltd., to vote and work for respondent No. 1.

Sri Somnath (P.W. 2), Secretary of the Nahan Foundry, Nahan, stated that the Foundry is a private limited company with 4,000 shares valued at Rs. 1,000 each, out of which 3,994 shares are in the name of the President of India. The remaining 6 shares are held by officers who have given in writing that they have no personal interest in them and that they are holding the same for and on behalf of the President of India. He also stated that the total number of the employees of the Nahan Foundry (Private) Ltd., in the month of May, 1957, was 534 at Nahan itself.

The petitioner examined two witnesses under this part of the issue. Shih Ram (P.W. 22) stated that Sri M. M. Shah came to Nahan 7 or 8 days before the date of poll; that he was received by the workers of the Nahan Foundry; that they took out a procession taking Sri Shah with them; that in the evening an election meeting attended by 300 to 400 persons, most of whom were the employees of the Nahan Foundry, was held in the Hindu Ashram; that Sri Shah told the workers that all their (Nahan Foundry workers') grievances had been redressed by the Government and he wanted them to vote for the Congress and Dr. Y. S. Parmar. The witness also produced two photographs (Exs. 5 and 6) which, according to him, were taken by

him at the time of the public meeting at the Hindu Ashram addressed by Sri Shah. The photograph (Ex. 5) shows Sri Shah standing along with Sri Tapendra Singh and others while the photograph (Ex. 6) is alleged by him to be of a section of the audience mainly composed of the Nahan Foundry workers. Sri Muni Lal, M.L.A., (Punjab), (P.W. 29) gives a lie to P.W. 22 by stating that he attended the meeting addressed by Sri Shah at Nahan and that all that he heard him saying was that he (Sri Shah) had come there in support of the Congress; that people should vote for the Congress and that it was for their good. He makes no mention of any special appeal to Foundry workers.

The respondent No. 1 has also examined two witnesses on this point. They are Sri Ramesh Joshi, President of the Nahan Municipal Committee, and an employee of the Nahan Foundry (Private) Ltd., and Sri Mahesh Bhardwaj, another employee of the Nahan Foundry and the General Secretary of the Nahan Foundry Workers Union. Sri Ramesh Joshi (R.W. 1) stated that Sri Shah was welcomed near the outskirts of the city by about 2,000 persons of whom 100 to 150 persons must have been the Foundry workers; that Sri Shah was taken in a procession to the Circuit House and that in the evening between 8 and 9 p.m. Sri M. M. Shah addressed a gathering of about 500 to 600 persons; out of whom 30 to 40 persons must have been of the Nahan Foundry; and that the meeting was held in the Hindu Ashram. The witness also stated that the General Manager went to Sri Shah and requested him to visit the Nahan Foundry but he declined to do so on the ground that he had come on election work. The witness further stated that in the year 1955 the Nahan Foundry workers had two main demands, one relating to pay and allowances and the other to the enquiry against the management and that by the end of the year 1956 all those demands had been met by the Central Government. Both Sri Ramesh Joshi and Sri Mahesh Bhardwaj (R.Ws. 1 and 2) stated that during his election speech Sri Shah did not make any mention of the Nahan Foundry workers' demand and made no special appeal to them. They also stated that the number of the Foundry workers, who attended that public meeting, could not have been more than 40 or 45.

The respondent witnesses were confronted with photographs (Exs. 5 and 6). They admitted that most of the persons who could be seen sitting in the photograph (Ex. 6) were Foundry workers. They, however, said that the photograph related to a meeting of the Foundry employees held in Mazdoor Chowk and not to the meeting at the Hindu Ashram which was addressed by Sri M. M. Shah. Sri Mahesh Bhardwaj (R.W. 2) stated in cross-examination that the photograph (Ex. 6) had in fact been taken by him and that it was of a meeting of the Nahan Foundry Workers' Union held in Mazdoor Chowk.

It is clear from the evidence led by the parties that none of the demands of the Nahan Foundry workers were pending in May, 1957. It is also clear that the meeting addressed by Sri Shah in the Hindu Ashram was a public meeting which must have been attended mostly by persons other than the Foundry workers. In the circumstances there could be no occasion for Sri M. M. Shah to have made a special appeal to the Foundry workers. Sri Muni Lal, M.L.A., (P.W. 29) does not say that any such special appeal was made.

I believe the respondent witnesses Nos. 1 and 2 and decide Issue No. 1 (b) in the negative.

Issue No. 1 (c).—(i) The visit of Maharaja of Patiala to Paonta on 23rd of May, 1957, is not disputed. The petitioner's case is that immediately on his arrival a guard of honour was presented to him to give impression that he represented the Government.

The witnesses examined by the petitioner on this point are Amar Singh (P.W. 3), Station House Officer, Paonta, Darshan Singh (P.W. 10), Tara Singh (P.W. 15) and Sri Muni Lal, M. L. A., (P.W. 20). Darshan Singh (P.W. 10) stated that on the arrival of Maharaja of Patiala at Paonta the police saluted him. Tara Singh (P.W. 15) deposed that when the Maharaja of Patiala arrived at Paonta the police guard presented arms. Sri Muni Lal (P.W. 29) stated that on the arrival of the Maharaja at Paonta the police presented him guard of honour.

Amar Singh, Station House Officer, Paonta (P. W. 3) did not support the petitioner's case on this point. He stated that an entry is invariably made in the general diary whenever a constable is sent for guard of honour duty from the Police Station; that he had brought the original general diary of the Police Station, Paonta, for the 23rd of May, 1957, and that it did not contain any entry about any constable having been deputed for guard of honour duty.

The respondent himself and his witnesses Jugal Kishore (R.W. 8) and Sri Kalyan Singh (R.W. 9) stated on oath that they were present at the time the Maharaja of Patiala arrived at Paonta and that the Police did not present him guard of honour.

In my opinion the petitioner has failed to prove that any guard of honour was presented by the Himachal Pradesh Police on the arrival of the Maharaja of Patiala at Paonta on 23rd of May, 1957. I decide Issue No. 1 (c) (i) in the negative.

Issue No. 1 (c) - (ii) It does not arise.

Issue No. 1 (c) - (iii) The petitioner's case is that while addressing a public meeting at Paonta the Maharaja of Patiala exhorted the Sikhs in the name of religion to vote for respondent No. 1. The witnesses examined by the petitioner on this point are Darshan Singh (P.W. 10), Onkar Singh (P.W. 14), Tara Singh (P.W. 15), Arjun Singh (P.W. 17), Ram Kishan (P.W. 20), Ram Chandra (P.W. 23) and Sri Muni Lal, M.L.A., (P.W. 29). Darshan Singh (P.W. 10) stated that the Maharaja said that he was a Sikh leader; that he made a special appeal to the Sikhs to vote for respondent No. 1 and that after the conclusion of the meeting he went to the Gurdwara at Paonta. Onkar Singh (P.W. 14) stated that the Maharaja exhorted the Sikhs to vote for Sri Parmar, who had been their Chief Minister for five years. Tara Singh (P.W. 15) deposed that the Maharaja addressed the Hindus and Sikhs and said that he had come from Punjab and that they should vote for Dr. Y. S. Parmar. Arjun Singh (P.W. 17) also stated that the Maharaja made a special appeal to the Sikhs and asked them to have consideration for his visit from Punjab. Ram Kishan (P.W. 20) deposed that the Maharaja said that the people should vote for Sri Y. S. Parmar because voting for him amounted to voting for Sri Jawahar Lal Nehru. Ram Chandra (P.W. 23) and Sri Muni Lal (P.W. 29), although present at the time the Maharaja addressed the public meeting, did not care to say anything about any special appeal made by him to the Sikhs.

In rebuttal the respondent No. 1 examined himself and his two Congress workers Jugal Kishore and Kalyan Singh (R.Ws. 8 and 9) in support of his case, that the Maharaja made no special appeal to the Sikhs to vote for Sri Parmar.

The petitioner's evidence on the point as to what the Maharaja said at the time of the public meeting is neither uniform nor consistent. It is highly improbable that any special appeal should have been made to the Sikhs only in a general meeting attended by members of all castes and communities.

I find Issue No. 1 (c) (iii) in the negative.

Issue No. 1 (d).—(i) The only witness examined by the petitioner under this issue is Sri Nagin Chandra Pal (P.W. 24), Member, Territorial Council, Himachal Pradesh. He stated that Shri Pratap Singh Kairon while addressing the election meeting at Solan impressed on the voters that there had been no development in that area because during the last general election Sri Pal, a member of the opposition, had become successful with their support. He further stated that Sri Kairon impressed upon the audience that they should in that election vote for the Congress candidate so that there could be development in their area. When cross-examined the witness had to admit that there had been the following development projects in the Solan area during the years 1952 to 1955:—

- (1) A motor-road had been constructed by the Congress Government.
- (2) A Centre of Community Project was opened in Kunihar, Tehsil Arki, and that it was the first Community Project Centre to be opened in Mahasu district.
- (3) A leather factory run on co-operative basis was started at Kunihar.
- (4) A metal factory and a Basic Training School were also opened by the Government.
- (5) The construction of Sclan-Rajgarh road was started in the year 1954.

The respondent has examined Jagdish Mitra Sharma (R.W. 7) in rebuttal. He stated that Solan has greatly improved during the last 5 to 7 years and that Sri Kairon did not mention anything in his speech about the development or deterioration of Solan.

It is, therefore, clear that Solan area had not been neglected merely because it had failed to return a Congress candidate in the first general elections. There could, therefore, have been no occasion for Sri Pratap Singh Kairon to have impressed on the audience that in case they wanted to avoid stalemate and cared for progress they must vote for the Congress candidate.

Sri Nagin Chandra Pal is an interested witness. He belongs to the family and to the party of the petitioner.

In my opinion the petitioner has failed to prove his contention under this issue. It is decided in the negative.

Issue No. 1 (d).—(ii) It is said that at Paonta Sri Kairon exhorted the Sikh audience in the name of religion to vote for Sri Y. S. Parmar, respondent No. 1. The petitioner's witnesses on this point are Darshan Singh (P.W. 10), Onkar Singh (P.W. 14), Tara Singh (P.W. 15), Arjun Singh (P.W. 17), Ram Kishan (P.W. 20), Ram Chandra (P.W. 23) and Sri Muni Lal, M.L.A., (P.W. 29). Darshan Singh stated that Sri Kairon said in his speech that he was a Sikh leader. The witness also said that Sri Kairon made a special appeal to the Sikhs to vote in favour of Sri Parmar. Onkar Singh (P.W. 14) deposed that Sri Kairon appealed to the public in general and to the Sikhs in particular to vote for Sri Parmar. Arjun Singh (P.W. 17) stated that Sri Kairon canvassed support for the Congress. Ram Kishan (P.W. 20) stated that what Sri Kairon said at the public meeting was that voting for Sri Parmar amounted to voting for Sri Jawahar Lal Nehru. Tara Singh (P.W. 15) and Ram Chandra (P.W. 23) said nothing against Sri Kairon. Sri Muni Lal, M.L.A. (P.W. 29) stated that Sri Kairon appealed to the public in general to forget their grievances and to vote for Dr. Y. S. Parmar because their good lay in voting for the Congress. The witness

further stated that Sri Kairon appealed to the Sikhs not to be led away by communal sentiments in favour of a P.S.P. candidate, who was a Sikh, and that they should vote for the Congress.

On the other hand, Jugal Kishore (R.W. 8) and Kalyan Singh (R.W. 9) have stated that Sri Kairon made no special appeal to the Sikhs at the time he addressed the election meeting in Paonta.

The evidence led on behalf of the petitioner is inconsistent and far from convincing. I find that the petitioner has failed to prove this issue.

Issue No. 1 (d) (ii) is decided in the negative.

Issue No. 1 (e).— (i) & (ii) Both parts of this issue can be conveniently disposed of together.

The witnesses examined by the petitioner under this issue are Darshan Singh (P.W. 10), Billu (P.W. 16), Shih Ram (P.W. 22), Ram Chandra (P.W. 23) and Sri Muni Lal, M.L.A., (P.W. 29). All the petitioner witnesses stated that Sri Abid Ali addressed a meeting inside the mosque and that the meeting was mostly attended by the Muslims. Darshan Singh stated that Sri Abid Ali appealed both to the Muslims and to the Hindus but also reminded the Muslims that the Congress had protected them in the year 1947. Billu (P.W. 16) deposed that Sri Abid Ali appealed to the Muslims to vote for the Congress. Shih Ram (P.W. 22) stated that Sri Abid Ali appealed to the Muslims in particular to vote for the Congress because it had saved them in the year 1947. Ram Chandra (P.W. 23) also stated that a special appeal was made to the Muslims. Sri Muni Lal, M.L.A. (P.W. 29) gave support to the statement made by Darshan Singh and Shih Ram on the point of special appeal to the Muslims and on their being reminded of their safety in the year 1947.

The evidence in rebuttal consists of the statements made by Abdullah (R.W. 6), Jugal Kishore (R.W. 8) and Kalyan Singh (R.W. 9). Abdullah (R.W. 6) is the Imam of the mosque at Misarwala. All the three respondent witnesses stated that no meeting was held inside the mosque and in the general meeting that was addressed by Sri Abid Ali outside the mosque no special appeal was made to the Muslims. The case of the petitioner on this point has not been consistent. A perusal of paragraph 4 (a) (vi) of the petition shows that the contention of the petitioner under this issue was as follows:—

“Sri Abid Ali at Misarwala (Paonta tehsil) told the Muslim voters in the mosque to vote for respondent No. 1 on or about 24-5-1957, otherwise they meet the same fate as they met in the communal disturbances of 1947”.

It was pointed out by respondent No. 1 in his written statement that there had been no communal disturbance in Paonta tehsil in the year 1947. That was perhaps the correct position and the petitioner seems to have changed his case accordingly at the stage of evidence. No value can be attached to such evidence.

It is difficult to understand why an election public meeting, meant to be attended both by the Hindus and Muslims should be held inside a mosque. Abdullah (P.W. 6), the Imam of the mosque, has stated on oath that no election meeting took place inside his mosque. I believe him.

The result is that I find that the petitioner has failed to prove his case under Issue No. 1 (e) (ii). It is decided in the negative.

As regards Issue No. 1 (e) (i), there is no proof that Sri Abid Ali was invited by respondent No. 1. However, it has not been disputed that he came on the invitation of the Congress Party. The issue is decided accordingly.

Issue No. 1 (f).—(i) & (ii) Both the parts of this issue can be easily disposed of together. There is no evidence on behalf of the petitioner that Sri Gaur, a Conservator of Forests, declared the forest near villages Ajauli, Baliwala and Kishankote open for grazing the cattle or that it was done at the instance of respondent No. 1. Issue decided in the negative.

Issue No. 2.—The publication of the message from Sri Jawahar Lal Nehru contained in the hand-bills (Exs. 1 and 2) and the visits of the Ministers, namely Sarv Sri M. M. Shah, Pratap Singh Kairon and Abid Ali and of the Maharaja of Patiala in order to support the candidature of Sri Y. S. Parmar cannot, by any stretch of imagination, be regarded to be undue influence as defined in sub-section (2) of section 123 of the Representation of the People Act, 1951. The case of *Linge Gowda Vs. Shiva Nanjappa*, decided by the Election Tribunal, Bangalore, on May 11, 1953, and reported in VI E.L.-R. at page 288 is an authority for the preposition that a leader of a political party is entitled to declare to the public the policy of the party and ask the electorate to vote for his party without interfering with any electoral right and such declarations on his part would not amount to undue influence under section 123 (2) of the Representation of the People Act. The fact that a leader of a political party happens to be a Minister or Chief Minister of a State or Prime Minister of the country would not deprive him of this right. A simple message from Shri Jawahar Lal Nehru could not be interpreted by the public in the manner alleged by the petitioner.

It has been contended by the learned Counsel for the petitioner that in the circumstances of the present case the undue influence should be presumed because:—

- (a) the leaders were called on the eve of the date of poll; and
- (b) Sri Abid Ali visited only those areas where the Muslims were in a majority, the Sikh leaders visited the areas where most the Sikhs resided and Sri M. M. Shah came to Nahan where most of the workers of the Nahan Foundry, controlled by the Government, were to be found.

In my opinion there is no force in this argument. An entirely new case cannot be allowed to be built up at the stage of arguments. The issues shall have to be decided with reference to the pleadings of the parties only.

Issue No. 3.—In view of the fact that Issues Nos. 1 (c) (iii), 1 (d) (ii) and 1 (e) (ii) have been decided in the negative, this issue does not arise.

Issue No. 4.—No evidence has been led under this issue. It is decided in the negative.

Issue No. 5.—There is no evidence in support of the allegations forming the subject matter of this issue. On the other hand, respondent No. 1 has stated that Mohd. Rahman or Mohd. Ramzan did not work for him. Sri Hari Chand (P.W. 8), Secretary, Municipal Committee, Nahan, stated that the Municipal Committee had been superseded in the year 1955 and had remained superseded till the month of May, 1957; that Mohd. Rahman S/o Mohd. Ramzan was employed as a D.D.T. Supervisor by the Civil Surgeon, Nahan, in the first week of June, 1957 and that Dr. Y. S. Parmar had no hand in that appointment.

The issue is decided in the negative.

Issue No. 7.—(i) & (ii) In view of the findings on Issues Nos. 4 to 6 both the parts of this issue do not arise.

*Issue No. 9.—*No evidence worth the name was led by the petitioner under this issue. It might however, be observed that two witnesses, namely Mangat (P.W. 19) of village Ajauli and Ram Kishan (P.W. 20) of village Kishanpur have stated that just a few days prior to the date of poll Kalyan Singh came to their village along with certain forest officers and got the forest opened to their cattle for grazing. They further stated that soon after the polling was over the Forest Guard again stopped them from exercising the grazing rights. The witnesses had to admit in cross-examination that nothing was given to them in writing when the forests were thrown open to them. On the other hand, Sri K. Kant Sharma (P.W. 9), Assistant Record Keeper, Forest Department, stated that the residents of Ajauli had, through the Dy. Commissioner, made an application to the Forest Department on 26-11-1956 for lopping of the trees for fodder but the Forest Department did not recommend that. The statements made by P.Ws. 19 and 20 are hardly convincing and fail to prove the contentions of the petitioner under this issue.

The issue is decided in the negative.

Issue No. 10.—(i) & (ii) No evidence has been led by the petitioner under these issues. They are decided in the negative.

Issue No. 10.—(iii) In view of the findings on Issues Nos. 10 (i) and 10 (ii), this issue does not arise.

*Issue No. 12.—*The allegations made in the petition concerning this issue are that the polling stations Nos. 433, 416, 83, 247 and 46 were published to be located at Jonli, Katari, Siasu, Bambira and Ganog, respectively, but the polling actually took place at Sungri instead of Jonli, Ghasni instead of Katari and Sarog instead of Siasu. It is further alleged that the polling stations at Bambira and Ganog were located in temporary structures but after some time the venue was changed due to the rains and the polling took place inside private houses to which most of the voters were unable to go.

The respondent No. 1 pleaded that he had no knowledge about Pambira and Ganog but at the remaining three polling stations the polling had taken place according to the order made in that respect. He pointed out that the polling was to be held in the dak-bungalow at Jonli, that Sungri is a part of Jonli and that the only dak-bungalow of Jonli is located in Sungri. He further pointed out that at Katari the polling was to take place in a school building and the only school building is situated in Ghasni which is part of Katari. He further pointed out that Sarog is a part of Siasu.

Sri Suresh Kumar (P.W. 6) election clerk stated that polling station No. 433 was announced to be held at dak-bungalow Jonli; that Sungri is a part of Jonli and that there is a dak-bungalow at Sungri only; that the polling station No. 416 was notified to be located in the school building at Katari and that the polling stations Nos. 83, 247 and 46 were to be located in temporary structures at Siasu, Bambira and Ganog respectively.

No evidence has been led by the petitioner regarding polling stations Nos. 433, 416, 83 or 46. Three witnesses, namely, Parma Nand (P.W. 25), Chandu (P.W. 26) and Jalam Ram (P.W. 27), were examined on behalf of the petitioner to prove that at about 2.30 p.m. the ballot boxes, etc. had been removed by the election staff from the

temporary structure at Bambira. Parma Nand and Chandu (P.Ws. 25 and 26) stated that at the time they went to the polling station, Bambira, the polling station had been abandoned and they could not know the place to which they were required to go to cast their votes. Jalam Ram (P.W. 27) stated that he was a polling agent of Sri Hira Singh Pal (petitioner) at Bambira; that the polling station was constructed beneath a Pipal tree at a distance of about 100 yards from the village; that at about 2 or 2.15 p.m. the wind became strong and it began to drizzle and that the ballot boxes were, therefore, shifted from the original place of polling to the first floor of the house of Nagina Ram in village Bambira.

Better evidence could have been led by the petitioner on this point but no attempt was made to do so. The Presiding Officer of the polling station, Bambira, was not called and so it is difficult to arrive at a definite finding whether or not the polling station Bambira was actually abandoned by the polling staff as alleged by (P.W. 27), Jalam Ram.

There is no other evidence of un-authorised change of the place of polling stations. In the absence of definite proof on these points I decide Issue No. 12 (i) in the negative. As regards Issue No. 12 (ii), I find that no evidence has been led by the petitioner to prove that the result of the election was materially affected on that account. In view of the findings on Issue No. 12 (i), this issue does not arise.

Issue No. 13 (i) and (ii).—No evidence has been led under these issues. They are, therefore, decided in the negative.

Issue No. 14.—The allegations in the petition concerning this issue are that innumerable ballot papers for Parliamentary constituency were lost; that the polling for the Parliamentary and for the Territorial Council was simultaneous but at every polling station on the first booth constructed was for Parliamentary and the second booth for the Territorial Council; that the first booth should have been for the Territorial Council and the second booth for the Parliamentary election, and that one ballot box of polling station No. 554 contained outside symbol of respondent No. 1 but inside symbol of Sri Satya Deo Bushahri.

The respondent No. 1 in his written statement alleged that there had been some confusion in respect of the ballot box of Sri Satya Deo Bushahri, but he had not gained thereby because the votes of that box were actually counted and recorded for Sri Bushahri.

The learned Counsel for the petitioner has failed to point out any rule of law by which the booth for Territorial Councils were to be first in the order of precedence. It is no doubt true that the practice at other places, where the Assembly and the Parliamentary elections are simultaneously held, was that the Assembly booths came first and the Parliamentary booths came next. However, that practice could have no application to Himachal Pradesh for the simple reason that it has no Assembly. The uniform practice adopted in Himachal Pradesh in placing the Parliamentary booths first and the Territorial Council booths next was not at all likely to create any confusion.

There is nothing on record to show that ballot papers for Parliamentary Constituency had been lost.

No evidence has been led in respect of the ballot box in question of Sri Satya Deo Bushahri. The result of the election could not be materially affected as a result of that

for the simple reason that according to the admissions of respondent No. 1 the ballot papers found in the said box were duly credited to Sri Bushahri.

The result is that Issue No. 14 is decided in the negative.

Issue No. 15.—There is no evidence on record to show that the ballot boxes had been tampered with. It has no doubt come on record that from inside a ballot box a stone was recovered at the time of the counting. It was a fairly big stone and could not have been put inside it through the slit meant for ballot papers. However, the mere presence of a stone inside a ballot box cannot lead to the only inference that it had been tampered with. The probability that the Presiding Officer did not discharge his duty properly and failed to notice the presence of the stone inside the box at the time it was sealed cannot be excluded.

Issue No. 15 (i) is decided in the negative. Issue No. 15 (ii) does not arise.

Issue No. 16.—The contention of the petitioner is that the respondent No. 1 has spent more than the prescribed limit (of Rs. 20,000) because:—

- (1) He must have spent a huge amount of money on polling agents and polling camps at 606 polling stations throughout the constituency.
- (2) The Maharaja of Patiala, Union Ministers and State Ministers came to the constituency to work for respondent No. 1 but their expenses have not been shown.

The reply of the respondent No. 1 is that nothing was spent on the aforesaid items. As regards the Ministers and the Maharaja of Patiala it was said by respondent No. 1 that they must have been sent by the Congress Organisation. As regards polling agents and polling camps, he stated that in view of the fact that most of the polling agents were Congress workers nothing was paid to them and that they made their own simple arrangements for establishing a camp near the polling stations.

No evidence has been led to show that nothing was paid by or on behalf of respondent No. 1 to the leaders or Ministers who visited the constituency during the election period. Again, there is no evidence on record to show that nothing was paid to the polling agents. Petitioner witnesses Darshan Singh (P.W. 10), Ram Chandra (P.W. 23) and Sri Nagin Chandra Pal (P.W. 24) no doubt stated that Rs. 40 to Rs. 60 must have been spent on each camp by respondent No. 1. Several petitioner witnesses stated that there were Congress election camps at various polling stations. The petitioner witnesses when cross-examined stated that the P.S.P. had also its election camps at various polling stations but nothing was spent on them.

On the other hand, the respondent and his witnesses Kashmir Singh (R.W. 3), Shiv Nath (R.W. 5), Jugal Kishore (R.W. 8) and Kalyan Singh (R.W. 9) have stated that nothing was spent on the Congress camps.

In view of the statements made by the petitioner witnesses that the P.S.P. camps at various polling stations did not cost anything, I have no hesitation in believing the witnesses for the respondent No. 1 when they state that nothing was spent on the Congress camps.

I find that the petitioner has failed to prove that the respondent No. 1 incurred or authorised any expenditure in contravention of section 77 of the Representation of the People Act, 1951.

Issues Nos. 8, 11, and 17.—These issues may be conveniently disposed of how, one after the other.

Issue No. 8.—(i) Naik clerk Chanan Singh (P.W. 1), A.S.C. (S.D.) from 27, Headquarters, Infantry Division, New Delhi, brought the service book of 'copy Amar Singh of Sheopur (Sepoy Service No. 3337737) attached with 27, Divisional Headquarters, New Delhi, and stated that the said Amar Singh remained on leave from 17-5-1957 to 15-7-1957. It has been stated by the several witnesses of the petitioner (*vide* P.Ws. 4, 5, 10, 12 to 15, 17, 18 and 21) that Amar Singh on reaching Sheopur a few days before 25-5-1957, which was the date of poll, started canvassing for Sri Y. S. Parmar, respondent No. 1.

The statement made by Tara Singh (P.W. 15) is general to the effect that Amar Singh had come on leave and did canvassing from village to village supporting the cause of Sri Y. S. Parmar. Mehar Singh (P.W. 4) is the Lumberdar of village Sheopur. He stated that Amar Singh, S/o Mahesha, Sain Sikh of Sheopur, was employed in the Military; that he had come on leave and that on 25-5-1957 Amar Singh worked as polling agent at polling station Sheopur throughout that day. Man Singh (P.W. 5) also stated to the same effect. Darshan Singh (P.W. 10), Nirmal Singh (P.W. 12), Jagat Singh (P.W. 13) and Onkar Singh (P.W. 14) are residents of village Haripur Tohana. They stated that Amar Singh came to their village four or five days before the date of poll to canvass support for Dr. Y. S. Parmar. He talked to them on that point. Arjun Singh (P.W. 17) is a relation of Amar Singh and a resident of village Akalgarh which is contiguous to the *abadi* of village Sheopur. He also stated that Amar Singh was working for Sri Y. S. Parmar and Kalyan Singh. Lachhman Das (P.W. 18) and Naraina (P.W. 21) are the residents of village Kanuwala. They stated that Amar Singh came to their village also to canvass support for Dr. Y. S. Parmar.

In rebuttal the respondent No. 7 has examined himself and his three workers, namely Kashmir Singh (R.W. 3), Jugal Kishore (R.W. 8) and Kalyan Singh (R.W. 9). They stated that Amar Singh was neither a Congressman nor a canvasser for the Congress candidate and that they did not know him. According to Kashmir Singh (R.W. 3) the witness knew him for the first time on 25-5-1957 when a form of appointment of polling agent, after filling up his name, was handed over to him.

The respondent No. 1 has not cared to examine his field workers for villages Sheopur, Haripur Tohana and Kanuwala. Without the examination of such witnesses there could be no effective denial to the statements on oath made by the 10 petitioner witnesses of villages Sheopur, Haripur Tohana and Kanuwala.

It has been argued by the learned Counsel for the respondent No. 1 that the petitioner witnesses should not be believed because they have leanings either in favour of the P.S.P. or against the Congress. I am not prepared to accept this argument. It is apparent that most of the petitioner witnesses are pro-P.S.P. and not in favour of the Congress but that alone cannot be any justification for discarding their sworn testimony. I agree that it has to be received with caution.

In the present case I have no hesitation in believing petitioner witnesses under this issue because their testimony is in conformity with other circumstances of the case. It is to be noted that Amar Singh was actually appointed a polling agent on the polling day. He was quite alive to the interest of respondent No. 1 because as soon as some one pointed out that, as a Government servant, he should not act as a polling agent of the respondent No. 1, he surrendered the polling agent badge and voluntarily retired from the polling booth. It is in evidence that Sri Kalyan Singh, the main

worker for Sri Y. S. Parmar and himself a candidate for Territorial Council seat, reached Sheopur polling station a little before 8 a.m. on the polling day. No action was taken by him against the appointment of Amar Singh as polling agent. In my opinion the circumstances of the case are such that Amar Singh must have been appointed as a polling agent in recognition of the services rendered by him during the past one week.

I believe the petitioner witnesses on this point and decide Issue 8 (i) in the affirmative.

Issue No. 8.-(ii) Ex. 4 is form No. 10 of the appointment of Amar Singh as polling agent at No. 13 Sheopur polling station. Sri Y. S. Parmar, as R.W. 10, admitted it to be signed by him. Sri Bhanu Pratap, Executive Engineer, B&R, Nahan, worked as the Presiding Officer at Sheopur polling station. He stated, as P.W. 7, that Amar Singh presented the form (Ex. 4) before him and signed it in his presence and thereafter the Presiding Officer also signed it in token of its acceptance.

The case of the respondent under Issue No. 8 (ii) is that there was no valid appointment of a polling agent by Ex. 4, because Sri Y. S. Parmar had signed the appointment form (Ex. 4) on 28-4-1957 and left names etc. of the polling agents blank. Evidence has been led to show (*vide* the statements made by R. Ws. 4, 8 and 9) that the names of the polling agents had not been finalised by 28-4-1957, the date on which Sri Parmar signed Ex. 4, nor was Amar Singh available on that date. The blank forms of Paonta tehsil remained with Kalyan Singh (R.W. 9) till a few days before the date of poll when he, in his turn, filled up the name and the number of the polling stations in all the forms of Paonta tehsil and handed over three such forms relating to Sheopur polling station to Kashmir Singh, who was appointed camp incharge at that polling station. The poll was to take place on 25-5-1957. It was settled in a meeting of workers at Paonta on 23rd May, 1957 that Kashmir Singh was free to appoint three polling agents out of the four persons, namely Shub Nath, Gulab Singh, Kartar Chand and Sundar Singh, whose names had been mentioned to him in that meeting; that Kashmir Singh was given the three polling agent appointment forms with that limited authority; that on reaching Sheopur on the 25th morning Kashmir Singh could find only two out of the four persons whose names had been recommended to him for appointment as polling agents; that it was getting late and the Presiding Officer was insisting that polling agents be sent to the booth immediately; that Kashmir Singh wanted to appoint one Kabil Singh of Sheopur as the third polling agent for respondent No. 1; that Kabil Singh did not agree but suggested the name of Amar Singh; that Kashmir Singh did not know the Amar Singh was a Government servant; that he directed his clerk to fill in the name of Amar Singh in the appointment form (Ex. 4) and handed over the complete form to Amar Singh.

The respondent No. 1 did not plead in his written statement that Amar Singh had been appointed a polling agent in the above mentioned circumstances or that Kashmir Singh had a limited authority only. These facts ought to have been specifically pleaded (*vide* Order VIII, Rule 2.C.P.C.). The respondent's case was not revealed even during the cross-examination of the petitioner witnesses. It appears to be the result of an afterthought.

There can be no doubt that Kashmir Singh's authority to fill in the names of suitable persons as polling agents at the spot on the date of poll was quite un-restricted as will appear from the following facts:—

- (1) According to Kashmir Singh himself he first thought of appointing Kabil Singh as the polling agent of Dr. Y. S. Parmar and later completed the same

appointment form in the name of Amar Singh. None of them belonged to the alleged approved list.

- (2) It was by no means necessary for Kashmir Singh to have appointed more than two polling agents for one polling booth. Under the law only one polling agent and two relief agents could have been appointed (*vide* Rule 13). Only one polling agent could remain inside the booth at any one time.
- (3) Kalyan Singh (R.W. 9), President of the Sirmur District Congress Committee, who was himself a candidate for a Territorial Council seat, visited the polling station at about 8 a.m. just before the polling started. Sri Kalyan Singh was vitally interested because he himself had given similar blank appointment forms of polling agents to the camp incharge and the polling agents of Sri Y. S. Parmar and Sri Kalyan Singh were to be the same persons. According to Kalyan Singh no mention was made to him by Kashmir Singh about the appointment of Amar Singh.
- (4) Respondent No. 1 had to admit in his cross-examination that the intention was that any Congress worker, who would go to the polling station with such blank and signed forms, would fill the blanks at the spot. He further admitted that these were his instructions to Kalyan Singh.
- (5) The statements made by the witnesses of respondent No. 1 that the names of all the polling agents had been finalised on 23-5-1957 does not appear to be true. Had that been so, a list of all the polling agents for all the polling stations of Paonta tehsil must have been prepared. No such list is forthcoming.

I am not prepared to believe that a list of the polling agents had been finalised or that the authority of the camp incharge in that respect was restricted. In my opinion a general authority was given to the camp incharge to fill in the names of the polling agents at the spot according to his own discretion.

The statements made by Kashmir Singh (R.W. 3), Jugal Kishore (R. W. 3) and Sri Kalyan Singh (R.W. 9) and Sri Y.S Parmar (R.W. 10) on the point that the polling agent appointment form (Ex. 4) and similar other forms throughout the constituency, were filled up in three instalments are quite likely. The constituency was a big one, there being 606 polling stations, for which nearly 2,000 polling agents had to be appointed. It was physically impossible for respondent No. 1 to have personally obtained the signatures of the polling agents on the date of polling at each polling station. However, the question of illegality of the appointment of polling agents in cases where the polling agent appointment forms are filled up in such circumstances in three instalments, can hardly arise, Kalyan Singh was working under the authority given to him by respondent No. 1 himself and Kashmir Singh worked as an agent of Kalyan Singh and respondent No. 1. The form No. 10 (Ex. 4) was, therefore, completed under the general authority from respondent No. 1. Kalyan Singh working as an agent of respondent No. 1 and Kashmir Singh as an agent both of Kalyan Singh and respondent No. 1. The appointment form (Ex. 4) when completed must be deemed to have been completed under the authority of Sri Y. S. Parmar, who being a candidate, alone was competent to appoint a polling agent (*vide* Section 46 of the Representation of the People Act read with Rule 13 of the Rules framed thereunder). The appointment was complete as soon as all the details had been filled in the form and it was handed over to Amar Singh for being presented to the Presiding Officer.

It is not open to respondent No. 1 to plead or to contend that the appointment of Amar Singh as polling agent was incomplete or ineffective because the entire form had not been filled up in his presence. If such pleas were available to the candidates every candidate could easily defeat the strict provisions of law by this device. Where blank appointment forms are handed over by a candidate to be filled up by his agents or workers at a later stage according to their discretion the candidate cannot take a plea to the effect that only those appointment forms are acceptable to him which did not harm and the rest must be regarded to be invalid, and ineffective. A candidate in such cases must be held fully responsible for the acts of his agents and workers.

It is contended by the learned Counsel for respondent No. 1 that in any case the act of Kashmir Singh must be regarded to be beyond the limits of his authority because he appointed a Government servant as a polling agent and the general instructions of respondent No. 1 had been that no Government servant should be appointed as a polling agent. There is no force in this argument. It is not proved in this trial by any satisfactory and independent evidence that such general instructions had been issued. The circumstances of the case are such that any enquiry by Kashmir Singh about the status of Amar Singh would have at once revealed that he was a member of the Armed Forces of the Union. The polling station was in the same village in which Amar Singh resided. According to the statement made by Kashmir Singh (R.W. 3) Amar Singh had come clad in a shirt and pant a dress unusual for ordinary residents of the village. It, therefore, became all the more incumbent on Kashmir Singh to have made enquiry about Amar Singh from his field workers or others. The fact that no enquiry was made by him clearly shows that either Kashmir Singh knew the full facts already and did not regard the same to be objectionable or that proper instructions had not been issued to him.

In my opinion the appointment of Amar Singh as the polling agent of Sri Y. S. Parmar was complete as soon as the form was filled up on 25-5-1957 and handed over to the polling agent for being taken to the Presiding Officer.

Issue No. 8 (ii) is, therefore, decided in the affirmative.

Issue No. 11.—The questions to be considered under this issue are:—

- (1) Whether Amar Singh was member of the Armed Forces of the Union on 25-5-1957?
- (2) Did he work as the polling agent of Sri Y. S. Parmar?
- (3) What is the effect of the contention that respondent No. 1 and his workers were not aware that Amar Singh was a Government servant?

There can be no doubt that Amar Singh, who was appointed as the polling agent of respondent No. 1 at Sheopur polling station, was on 25-5-1957 a member of the Armed Forces of the Union. The relevant portion of the written statement of respondent No. 1 on this point reads as follows:—

“Amar Singh was not a polling agent of this respondent either in law or in fact. After the receipt of the copy of this petition from the Election Commission this respondent made enquiries and he is informed that Sri Amar Singh of Sheopur presented a polling agent from to the Presiding Officer concerned. Soon after some body, who happened to know Sri Amar Singh as a member of the Armed Forces, pointed out his ineligibility to act as a polling agent. Immediately the said Amar Singh withdrew from the polling station before the commencement of actual voting without doing any work as

polling agent whatsoever. It may further be submitted that the said Sri Amar Singh did neither work nor canvass for this respondent in the villages mentioned in this clause. In fact this respondent did not even personally know the said Amar Singh nor did this respondent or any of his agents or supporters ask him to work or canvass for this respondent. It may also be further added that this did not affect, much less materially affect, the result of the election."

The service-book of Amar Singh of Sheopur, Sepoy service No. 3337737 was summoned from Headquarters, 27, Infantry Division, New Delhi, and was brought by Naik clerk Chanan Singh (P.W. 1). The witness stated on the basis of the entries in that service-book that Sepoy Amar Singh was attached with 27, Infantry Divisional Headquarters, New Delhi; that the aforesaid Sepoy Amar Singh is a Saini Sikh; that his father's name is Mahesh Singh, resident of village Sheopur, Tehsil and District Paonta, Nahan State. Sepoy Amar Singh appears to have received his appointment before the Nahan State was integrated into Himachal Pradesh. The witness also stated that the said Amar Singh remained on leave from 17th of May, 1957 to 15th July, 1957.

A number of witnesses, namely Mehar Singh (P.W. 4), Darshan Singh (P.W. 10), Nirmal Singh (P.W. 12), Jagat Singh (P.W. 13), Onkar Singh (P.W. 14), Arjun Singh (P.W. 17) and Lachhman Das (P.W. 18) stated that Amar Singh, resident of Sheopur, is in Military service for the last several years and that he had come to his village on leave at the time on the last general elections.

The pleadings of the parties, the evidence led by the petitioner, the statement of Naik clerk Chanan Singh (P.W. 1), supported by the service-book of Amar Singh, leave no doubt about the identity and the position in life of the said Amar Singh. Amar Singh, who worked as a polling agent of respondent No. 1, was a member of the Armed Forces of the Union.

The term "the Forces" as defined in section 3 (xi) of the Army Act, 1950, means the regular Army, Navy and Air Force. Amar Singh being a Sepoy of the Indian Army must be deemed to be a member of the Armed Forces of the Union. It appeared from the cross-examination of Chanan Singh (P.W. 1) that Amar Singh had been working as an Office Orderly. It was, therefore, suggested by the learned Counsel for respondent No. 1 that as an Office Orderly Amar Singh might not be a member of the Armed Forces of the Indian Union and could hold merely a civil post in the Defence Services of India. In my opinion there is no force in this suggestion. No plea was taken in the written statement to that effect. On the other hand, a perusal of the written statement shows that the result of the enquiry made by respondent No. 1 did reveal that Amar Singh was a member of the Armed Forces. The service-book of Sepoy Amar Singh had been brought by Chanan Singh (P.W. 1) and no question was put to the witness in cross-examination to suggest that Amar Singh merely held a civil post in Defence Services. It is common knowledge that in the Army members of the Armed Forces have to act even as Office Orderlies. The mere fact that Amar Singh was posted as Office Orderly before he proceeded on leave on 17-5-1957 does not lead to an inference that he was holding a civil post in the Defence Services.

I find that there is abundant proof on record that Amar Singh of Sheopur, who was appointed as the polling agent of Sri Y. S. Parmar, was on 25-5-1957 a member of the Armed Forces of the Union.

I have already held under Issue No. 8 (ii) that Amar Singh was appointed as the polling agent of respondent No. 1 at Sheopur polling station. Sri Bhanu Pratap,

Executive Engineer, who was the Presiding Officer of Sheopur polling station and Sri Prem Singh, who worked as a Polling Officer at the same polling station, have stated that the polling at Sheopur polling station started at 8 a.m. and Amar Singh worked as a polling agent upto 9.30 or 10.30 a.m. In the face of the statements made by these reliable and independent witnesses no reliance can be placed on the statements made by Indra Singh (R.W. 4) or Shiv Nath (R.W. 5) that no work was done by Amar Singh as a polling agent on that day.

I believe Sri Bhanu Pratap, Executive Engineer (P.W. 7) and Sri Prem Singh, the then Polling Officer of Sheopur polling station and hold that Amar Singh who had been appointed as the polling agent of Sri Y. S. Parmar, did work as such and remain inside the polling booth till at least 9.30 a.m., i.e., at least till an hour and half after the polling had started at Sheopur polling station.

As I have mentioned earlier it was possible for Sri Kashmir Singh, who handed over the polling agent form to Amar Singh, to have easily ascertained about Amar Singh that he was a Government servant. The mere fact that he did not know it, or did not care to enquire about it, will not absolve the respondent No. 1 from the effect of the appointment of a Government servant as his polling agent.

Sub-section 7 of section 123 of the Representation of the People Act, 1951, does not provide that the assistance from any person in the service of the Government must be taken with the knowledge that such person is in the service of the Government. In other words, knowledge of that fact is not one of the essential ingredients of sub-section (7) of section 123 of the Representation of the People Act. If it ultimately turns out that a candidate did take the assistance of a person who was a Government servant of the prohibited categories the mere absence of knowledge on the part of the candidate on the point that such person was in the service of the Government will not absolve him from the rigour of the law.

The circumstances of the present case, however, are such that even if such knowledge were necessary as an essential ingredient of sub-section (7) of section 123 of the Representation of the People Act the same could be presumed because it was quite easy for Kashmir Singh, the agent and worker of respondent No. 1, to have derived that knowledge only in case he had cared to do so.

The explanation (2) to sub-section 7 of section 123 of the Representation of the People Act provides that:

“For the purposes of clause (7) any person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent or a polling agent or a counting agent of that candidate.”

The result is that I find that respondent No. 1 obtained the assistance of Amar Singh, a member of the Armed Forces of the Indian Union and a Government servant, for the furtherance of the prospects of his election.

Issue No. 11 is decided accordingly in the affirmative.

Issue No. 17.—I have already held under Issue No. 8 (ii) that the respondent No. 1 has failed to prove by any reliable evidence that he gave specific directions to his workers, supporters and agents that they must not appoint any Government servant as his polling agent. I have also held that in the circumstances of the case it cannot be said that the corrupt practice under section 123 (7) was committed without his sanction and

contrary to his directions. After all the appointment or a polling agent is deemed in law to have been made by the candidate himself, and by no other person.

Both the paras of Issue No. 17 are, therefore, decided in the negative.

Issue No. 18.—The effect of the corrupt practice proved to have been committed in this case has to be considered. The case will fall clearly under section 100 (1) (b) which reads as follows:—

“That any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;”

The reason is that the appointment of a polling agent can be made only by a candidate or his election agent and by no one else. Section 100, clause 1 (d), where material effect of the corrupt practice has also to be seen, applies only to cases in which the corrupt practice has been committed by a person other than the candidate or his election agent. Section 100 (i) (d) (ii) cannot, therefore, apply to the facts of the present case in which the corrupt practice must be deemed to be committed by the candidate himself.

The provisions of sub-section (1) of section 100 are always subject to the provisions of sub-section (2) of that section. However, sub-section (2) of section 100 will not apply to the facts of the present case because according to my finding the corrupt practice was committed by the candidate himself.

The result is that the petition must be allowed and the election of Sri Y. S. Parmar as a Member of the House of People from the Mahasu Constituency of the House must be declared void under section 98 read with section 100 of the Representation of the People Act.

Issue No. 18 is decided accordingly.

I find that Sri Y. S. Parmar, respondent No. 1, is guilty of the corrupt practice of obtaining assistance for the furtherance of the prospects of his election from Amar Singh, a person in the Armed Forces of the Union by appointing him as his polling agent at polling station Sheopur No. 13. The said Amar Singh had also worked and canvassed for him.

ORDER

The petition is allowed under section 98 of the Representation of the People Act and I declare the election of Sri Y. S. Parmar as a member of the House of People from the general seat of the double Member Mahasu Constituency of the House to be void. I fix the total amount of costs payable by respondent No. 1 to the petitioner to be Rs. 700 only. Respondent No. 2, against whom no relief was sought, shall bear his own costs.

KUSUMPTI;
The 28th April, 1958.

S. D. KHARE,
Member, Election Tribunal,
Himachal Pradesh.

By order,
DIN DAYAL,
Under Secretary to the Election Commission.